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9 UNITED STATES DISTRICT COURT

10 CENTRAL DISTRICT OF CALIFORNIA

11 ALINA KORSUNSKA,

) Case No.: CV13-7010 CAS (AJWx)

12 Plaintiff,

)

13 vs.

) **DECLARATION OF ALINA
KORSUNSKA IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
FEDERAL DEFENDANT'S
MOTION FOR SUMMARY**

14 Federal Defendant.

) **JUDGMENT**

)

15) Hearing Date: July 28, 2014

16) Hearing Time: 10:00 a.m.

17) Courtroom: 5 – 2nd Floor

18)

19) Hon. Christina A. Snyder
20) U.S. District Court Judge

1 I, Alina Korsunska, hereby declare and state the following:

2 1. I am a party to the above-entitled case.

3 2. I submit this declaration in support of my opposition to Federal
4 Defendant's Motion for Summary Judgment. I have personal knowledge of the
5 following facts, and if called as a witness, I could and would competently testify
6 thereto in a court of law, under oath, subject to the penalty of perjury.

7 3. I began working for the U.S. and Immigration Services (hereinafter
8 "USCIS") in August 2008.

9 4. On October 15, 2009, I was wrongly terminated because of my
10 national origin (Ukraine) and religion (Judaism). On November 13, 2009, I filed a
11 charge of discrimination with the USCIS EEO.

12 5. On June 9, 2010, I reached a non-monetary settlement with the
13 Department of Homeland Security (hereinafter "DHS") whereby my electronic
14 Official Personnel File would reflect that I resigned for personal reasons. I did not
15 ask for monetary damages from the Agency, I simply wanted a clear record and
16 fair performance evaluation. Accordingly, DHS was to also provide a neutral
17 reference to potential employers whereby Eva Aldrete-Herring would tell potential
18 employers my position title, GS grade at the time I resigned, my salary at the time I
19 resigned, my dates of employment, and that my last performance rating was Fully
20 Successful. A true and correct copy of the settlement agreement is attached as
21 **Exhibit A** to Plaintiff's Evidentiary Appendix.

22 6. In early January 2011, I learned that Defendant was in breach of the
23 settlement agreement by not providing the required reference report to potential
24 employers. On January 17, 2011, I sent a letter to DHS Office of Civil Rights and
25 Civil Liberties (hereinafter "OCR") to file a complaint for breach of the settlement
26 agreement. This complaint did not allege retaliation. A true and correct copy of
27 the letter is attached as **Exhibit B** to Plaintiff's Evidentiary Appendix.

1 7. On March 8, 2011, DHS-OCR determined that the agency did not
2 breach the agreement and that I did not suffer any harm from the Agency's
3 conduct. A true and correct copy of that decision is attached as **Exhibit C** to
4 Plaintiff's Evidentiary Appendix. I abandoned this complaint because of personal
5 circumstances.

6 8. In July of 2011, I discovered a May 27, 2011 email from the Social
7 Security Administration (hereinafter "SSA") notifying me that I was not selected
8 for positions. Furthermore, I was not selected for any position for which I applied
9 in 2010 (over ten (10) vacancies). Based on this newly discovered evidence of
10 discrimination, I initiated a separate and distinct informal claim of retaliation with
11 the USCIS EEO office on July 8, 2011. During my first intake interview, I told
12 EEO counselor that I believe USCIS' employees retaliated against me and
13 provided negative references to prospective employers. After the interview, EEO
14 counselor formulated the issues as follows: "Between July 1 and July 8, 2011 I
15 discovered that I received emails notifying me that I was not selected for positions
16 at Social Security Administration, which continues a pattern of positions that I
17 have been not selected for predicated upon the refusal of the personnel of the
18 USCIS California Service Center to honor the settlement agreement reached
19 between myself and the agency in June 2010." This claim was an entirely new
20 claim of retaliation, and was in no way connected to the January 17, 2011 informal
21 contact with DHS-OCR.

22 9. After the USCIS conducted its internal investigation, it provided me a
23 notice that I could file a formal complaint with DHS-EEO. I did so on or about
24 August 15, 2011, again alleging that DHS had retaliated against me based on my
25 prior protected activity by in effect breaching the June 2010 agreement. I could
26 not have filed this complaint on August 21, 2011 as that date is a Sunday and I sent
27 my complaint by certified mail which would not have been delivered on a Sunday.

1 A true and correct copy of Plaintiff's complaint is attached as **Exhibit D** to
2 Plaintiff's Evidentiary Appendix.

3 10. On December 2, 2011, DHS dismissed my complaint for failure to
4 state a claim. A true and correct copy of that decision is attached as **Exhibit E** to
5 Plaintiff's Evidentiary Appendix.

6 11. On January 6, 2012, I appealed the December 12, 2011 decision with
7 the EEOC Office of Federal Operations (hereinafter "OFO").

8 12. On May 1, 2012, the EEOC-OFO reversed DHS-EEO's dismissal and
9 remanded the case back to the agency to process my complaint as a claim for
10 breach of agreement. In its order, the EEOC-OFO advised me that its order was
11 one requiring the Agency to continue its administrative processing of my
12 complaint. A true and correct copy of that decision is attached as **Exhibit F** to
13 Plaintiff's Evidentiary Appendix, see pgs. 2-3 of same. The EEOC-OFO advised
14 me that I could request a reconsideration of its decision or could terminate the
15 administrative processing of my complaint by filing a civil action. *Id.*

16 13. On or around May 31, 2012, I submitted a request for reconsideration
17 of the EEOC-OFO's May 1, 2012 decision re-characterizing my retaliation claim
18 as one of breach. A true and correct copy of the docketing notification from the
19 EEOC is attached as **Exhibit G** to Plaintiff's Evidentiary Appendix. In that
20 request, I challenged the EEOC-OFO's decision to in effect dismiss my retaliation
21 claim. I stated that my complaint has two claims, breach and retaliation. I
22 emphasized that the agency's employees acted with malice and breach of
23 agreement was motivated by retaliation. I also said that the agency misinterpreted
24 and fragmented my complaint to create grounds for dismissal, while my complaint
25 raises more issues than just non-selection for positions with Social Security
26 Administration.

27 14. On June 19, 2012, DHS-OCR issued a final decision on my August

1 15, 2011 complaint. A true and correct copy of that decision is attached as
2 **Exhibit H** to Plaintiff's Evidentiary Appendix.

3 15. On July 20, 2012, I appealed the DHS-OCR's June 19, 2012 decision
4 with the EEOC-OFO. A true and correct copy of that decision is attached as
5 **Exhibit I** to Plaintiff's Evidentiary Appendix.

6 16. On November 16, 2012, my request for reconsideration was denied.
7 A true and correct copy of that decision is attached as **Exhibit J** to Plaintiff's
8 Evidentiary Appendix. In response to my argument that my retaliation claim
9 should not have been dismissed, the EEOC-OFO stated: "We note that the
10 arguments asserted by Complainant - that the Agency breached the settlement
11 agreement with regard to employment references, and that the Agency retaliated
12 against her with regard to employment references - present essentially the same
13 question for determination." *Id.* at pg. 1. Further, the EEOC-OFO directed the
14 Agency to "consider whether there is evidence of retaliatory motive in the actions
15 of any personnel involved in the provision of [Plaintiff's] employment references."
16 *Id.* at footnote 1. The EEOC-OFO advised me that its order was one requiring the
17 Agency to continue its administrative processing of my August 15, 2011
18 complaint. *Id.* at pgs. 2-3. To the best of my information, knowledge and belief,
19 the November 16, 2012 order did not "advise [me] that there was no further right
20 of administrative appeal concerning her retaliation claim" as asserted by
21 Defendants. (See Federal Defendant's Motion for Summary Judgment at pg. 8,
22 lines 11-13.) Rather, it advised that I could terminate the administrative processing
23 of my complaint by filing a civil action. *Id.* at pgs. 2-3.

24 17. In spite of EEOC decision dated November 16, 2012, ordering the
25 Agency to conduct investigation, no corrective actions have been taken. Instead,
26 on February 6, 2013, my appeal dated July 20, 2012, of DHS-OCR Breach
27 decision dated June 19, 2012, was accepted for processing by EEOC.

18. On June 19, 2013, the EEOC-OFO issued a decision denying my appeal of DHS-OCR's June 19, 2012 decision. A true and correct copy of that decision is attached as **Exhibit K** to Plaintiff's Evidentiary Appendix.

19. On September 20, 2013, after I exhausted all available administrative remedies on my August 15, 2011 formal complaint, I timely filed the instant civil action within 90 days from the date I received the EEOC-OFO's June 19, 2013 decision, which was June 23, 2013.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 2, 2014, in Los Angeles

A. Korsu
ALINA KORSUNSKA, Plaintiff